

Panels of Physicians

The 5 Questions
You Should Know
the Answers to

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Building a Better Tomorrow

Who?

When?

What?

Where?

Why?

Who?

Who is entitled to a Panel of Physicians?

- The WC statute provides that a panel is required “in any case when the employee has suffered an injury and expressed a need for medical care.”
- However, the WC Regulations state that an employee who gives “notice of any workplace injury, other than a minor injury for which no person could reasonably believe requires treatment from a physician.”
 - Examples where a panel may not be necessary: papercut, jammed finger, etc.

Who should give the panel to the employee?

The employer should give the employee the initial panel of physicians, but in some cases, adjusters may provide the panel to the employee.

Who?

Even if the injured worker initially declines medical treatment, it is a good practice to provide a panel of physicians to the employee and have them sign and date a document confirming receipt of the panel which explains that if medical treatment becomes necessary, the employee is to select a physician from the panel.

*Keep a copy of this document and the panel!

When?

When should a panel be given?

- Immediately after notice of the workplace injury, but in no instance later than **3** business days.
 - This represents a change from 5 business days, effective May 31, 2018.
- Recommended that Employer provide the panel at the time the accident report is completed.

When?

- When the authorized physician selected from original panel makes a referral to a specialist, Employer/Carrier must provide a panel of specialists in the same specialty within 3 business days or the specific specialist the physician refers to automatically becomes the authorized treating physicians.
- If the employee chooses a specialist from this panel, this provider becomes the authorized treating physician.
- For purposes of this section, receipt of the referral by the employer shall be accomplished whenever a copy of the referral is received at the employer or carrier's place of business by facsimile, email, post, hand delivery or commercial delivery service.

What?

What constitutes a proper panel of physicians?

- A medical provider listed on the panel must be qualified, willing, and able to treat in a timely manner.
- The Bureau of Workers' Compensation has established a standard form to be used, called a C42 form.
- This form can be found on the Bureau's website, and should be used in all cases, rather than a similar form some employers have created.

What?



Tennessee Bureau of Workers' Compensation
220 French Landing Drive, I-B
Nashville, TN 37243-1002

FORM C-42

EMPLOYEE'S CHOICE OF PHYSICIAN

An employer must provide a partially-completed form listing at least three physicians to an employee upon the report of a workplace injury. The employee must complete and then sign and date the section below that indicates the physician chosen. A copy of the fully-completed form should be provided to the employee with the original kept on file by the employer. If the employee refuses to accept medical services from the chosen physician, the employee's rights to benefits may be delayed. **NOTE:** Employees traveling more than 15 miles one way to or from medical treatment may seek reimbursement of their travel expenses from the insurance carrier.

TO BE COMPLETED BY THE EMPLOYER:

Employer _____ Date of Injury _____

Employer Contact _____ Phone _____ Email _____

Physician Name _____ Phone _____

Address _____ City _____ State _____ Zip _____

Physician Name _____ Phone _____

Address _____ City _____ State _____ Zip _____

Physician Name _____ Phone _____

Address _____ City _____ State _____ Zip _____

TO BE COMPLETED BY THE EMPLOYEE:

I have selected the following physician from the list provided to me by my employer:

Physician Name _____ Date Selected _____

Employee Name _____ Appt Date/Time _____

Address _____ City _____ State _____ Zip _____

Phone _____ Email _____

Employee Signature _____ Date _____

What? Where?

What constitutes a proper panel, and Where can the physicians be located?

- The panel should include 3 or more independent reputable physicians, surgeons, chiropractors or specialty practice groups if available in the injured employee's community.
- If 3 or more independent reputable physicians, surgeons, chiropractors, or specialty practice groups not associated in practice together are not available in the employee's community, the employer shall provide a list of 3 independent reputable physicians, surgeons, chiropractors, or specialty practice groups not associated in practice together that are within a 125 mile radius of the employee's community of residence.
- "Not associated in practice together" means at least 1 physician, surgeon, chiropractor, or specialty practice group is not associated in practice with another physician, surgeon, chiropractor, or specialty practice group that is on the list or panel.

Can we direct to onsite medical providers?

- Yes. Employers may direct injured workers to onsite, in-house, or other similar employer-sponsored medical providers prior to providing a panel for an examination. However, employers still must provide a panel within 3 business days.
- Employers may list that employer-sponsored provider as an option on the panel, but the employee has the ultimate choice regarding which physician is selected.

What about urgent care clinics?

- Walk-in clinics, urgent care facilities, and other similar providers may be an option on a panel if the provider is staffed with at least 1 physician and the name of the staff physician or medical director is listed on the panel.
- Associated urgent care facilities and other similar providers may be listed on the same panel to the extent allowed by law provided that different staff physicians or medical directors are named for each different location.

What about just listing Specialty Practice Groups?

- If an employer provides a panel that contains the name of a specialty practice group which consists of multiple physicians willing to treat workers' compensation patients (example: Memphis Orthopedic Group) rather than listing an individual physician's name, if the employee chooses the group, the employee has the final choice as to which physician from that group shall become the authorized treating physician.
- Recommendation from defense counsel: just put the names of the physicians rather than practice groups to avoid this issue.

What about Nurse Practitioners?

- Nurse practitioners and physician's assistants may provide care under the supervision of the authorized physician.
- However, only the authorized physician chosen from the panel may determine medical causation, determine the date of MMI, and assign a permanent impairment rating.

What?

What should the employee do after receiving the panel?

- The employee should select a physician, sign and date the panel, and return it to the employer or adjuster.
- In any case when the employee has been presented the physician selection form but has failed to sign the completed form and return it to the employer, the employee's receipt of treatment from any physician provided in the panel after the date the panel was provided shall constitute acceptance of the panel and selection of the physician from whom the employee received treatment as the treating physician, specialist physician, chiropractor or surgeon.

What?

What if the employee moves, or the authorized physician retires?

- Upon request by the employee, the employer shall provide the employee, upon written request, a new panel of reputable physicians, surgeons, chiropractors or specialty practice groups that are local and available to the employee.
- Lifetime future medical benefits follows the employee, regardless of where they live or work.
- If the treating physician won't allow the employee to make an appointment at all or otherwise refuses to see the employee, the employee may have right to a new ATP. Employer must replace ATP's name on panel and/or create new panel altogether. Rationale: once the ATP starts refusing to allow the employee to schedule appointments, the physician is no longer "qualified, willing, and able to treat in a timely manner." See *George Limberakis v. Pro-Tech Security*

When?

When is an employee entitled to a second opinion?

- When the treating physician or chiropractor refers the injured employee to a specialist, the employee shall be entitled to have a second opinion **only on the issues of surgery and diagnosis** from a physician or chiropractor from a panel of 2 physicians practicing in the same specialty as the physician who recommended the surgery. In cases where the employer has provided a panel of specialists, the employee may choose 1 of the 2 remaining specialists to provide a second opinion on the issue of surgery and diagnosis.
- The employee's decision to obtain a second opinion shall not alter the previous selection of the treating physician or chiropractor.

Why?

Why should employers provide panels of physicians?

- Employer/Carrier has the ability to have some control/direction over the medical treatment, and it all begins with using a proper panel.
- Expedites the case and helps to avoid litigating issue of unauthorized medical treatment and bills.
- The authorized physician selected from the panel is given a statutory **presumption of correctness on issues of causation, MMI, impairment rating, and which treatment is medically necessary.**
- Flawed/improper panel removes presumption of correctness afforded to the physician's opinion(s). *Duncan v. Houchens Food Group, Inc.* (no presumption of correctness afforded to doctor's causation opinion where the doctor was the only doctor on the panel offered by employer. Employer did not comply with TCA 50-6-204(a)(3)).
- But wait, there's more...

Why?

Why should employers provide panels of physicians?

In the absence of evidence establishing a defense, where the employer fails to provide a panel of physicians to the employee within a reasonable amount of time, but in no instance longer than 3 business days from the date the employer has notice of an injury that would qualify for medical benefits, or provides a panel of physicians to the injured employee that does not meet statutory requirements, the employer may be assessed a civil penalty, not to exceed **five thousand dollars (\$5,000)**.

This is a hefty penalty that can easily be avoided in every case.

Now you know the answers to these questions,
do you have any questions for us?

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Questions?

Thank you



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We Care Enough To Do Our Very Best

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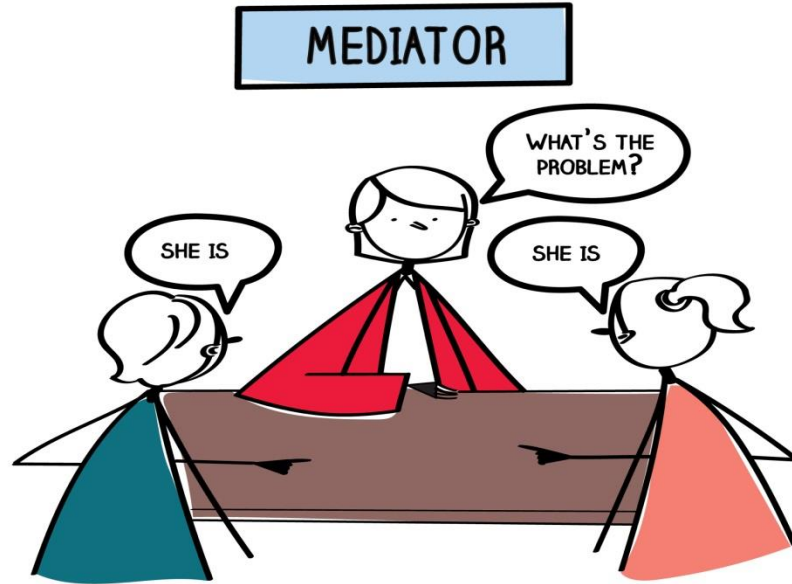
We Care Enough To Do Our Very Best



We are all in this together



The Mediator's Perspective on the PBD/Mediation Process



Litigation Causes

- Confusion—the system is complex, so are the words we use. **Avoid using jargon like PBD, Indemnity, IME, med-only**
- Fear of economic impact that the injury will have on IW
- Lack of control over choice of physician, lack of faith in physician
- Pressure from family, friends, TV ads
- Poor employer/ employee relationship—lack of help from those involved in the claim
- Poor claims handling practices—late benefit checks, Adjuster never available, won't return calls/emails

To avoid litigation, Adjusters should...

- Schedule medical appointments timely.
- Provide information timely.
- Respond to emails and return phone calls timely.



Adjuster Goals (cont.)

- Promptly file the First Report of Injury (C20).
- When a PBD/RFM is pending, notify the BWC of any Adjuster changes.

****New Rule-Effective 8/2/2018****

Claimants must be notified within 2 days whenever the Adjuster handling the claim changes.

- Send requested information to the Mediators by deadline dates.
 - Contact your Mediator if additional time is needed.

Adjuster Goals (cont.)

- Provide complete information on denied claims
 - Witness statements
 - Notice of Controversy/Denial
 - Medical Records

****New Rule-Effective 8/2/2018****

Claimants must be notified and provided the reason whenever the Adjuster denies a claim.

Adjuster Goals (cont.)

- Ensure all defenses are discussed, and preserved claims should be assigned to defense counsel timely.
- Assign cases to defense counsel when the parties have reached a roadblock or prior to a DCN.
- Send all file material to defense counsel timely.



The Adjuster's Perspective:



What can the BWC do to improve?

- Effectively communicate between unrepresented claimants, insurance carriers and attorneys.
- Reply to emails and phone calls timely and work diligently to resolve claims.
- Strive for uniformity.



Let's  Talk



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Questions?

Thank you



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